THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 11433 of 1997

Oral order:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Hyderabad, in I.D. No. 49 of 1991, dated 25.09.1996, the Deputy Executive Engineer, Gotta Barrage Sub Division, Vamsadhara Project, Hiramandalam, Srikakulam District, has approached this Court seeking to quash the award.

The Government referred the following dispute for adjudication by the Tribunal:

> Whether the Deputy Executive Engineer, Gotta Barrage Sub Division, Vamsadhara Project, Hiramandalam, is justified in terminating the services of Sri. D. Narasimhulu? If so, to what relief the said workman is entitled?

The 1st respondent-workman in his claim statement stated that he had worked under the petitioner from 1970 to September, 1974 continuously, and that he was retrenched in September, 1974 without any notice and compensation, and that his juniors and fresh workman, were continued/appointed. He further contended that the action of the petitioner in retrenching him is contrary to the provisions of Section 25-F and G of the Industrial Disputes Act, 1947 (for short 'the Act').

The petitioner, in his counter, denied that the 1st respondent had worked with them from 1970 to September, 1974 and that the 1st respondent was retrenched while continuing his juniors. He contended that the 1st respondent never worked with them at any time, and there was no privity of contract between them and as such, the question of removing him from service did not arise.

The 1st respondent-workman examined himself as W.W.1, and on behalf of the petitioner, the Office Superintendent of Executive Engineer, Vamsadhara Project, was examined as M.W.1. No documentary evidence was marked by either the petitioner or the 1st respondent.

The Tribunal, relying on the self-serving oral testimony of the 1st respondent held that it did not find anything in the cross examination to doubt the testimony of the 1st respondent that he worked from 1970 to September, 1974. The Tribunal held that since the petitioner had

failed to produce the records for the relevant period to show that the 1st respondent never worked with them, despite notice being served, an adverse inference had to be drawn to the effect that if the records had been produced, it would show that the 1st respondent had worked from 1970 to September, 1974. The Tribunal ultimately came to the conclusion that the 1st respondent had worked with the petitioner from 1970 to September, 1974, for a period of more than one year, and since no notice was given with regard to his termination and since no retrenchment compensation was also not paid, the retrenchment of the 1st respondent was contrary to Section 25-F of the Act. While holding that the 1st respondent was entitled to be reinstated, the Tribunal held that he was not entitled for backwages and continuity of service inasmuch as he had failed to take recourse to law for a long time and that he had kept silent for a period of more than 16 years. Accordingly, the Tribunal directed reinstatement of the 1st respondent without backwages and without continuity of service.

The learned Government Pleader for Irrigation submitted that the burden was on the 1st respondent to show that he had worked with the petitioner continuously for 240 days during the 12 months period prior to his termination, and it committed an error in shifting the burden on the petitioner and allowing the claim of the 1st respondent on the ground that the petitioner failed to produce the record to disprove that the 1st respondent had worked with them. The learned Government Pleader further submitted that the 1st respondent raised the dispute, nearly 16 years after his termination, and in such circumstances, the Tribunal could not have allowed the claim of the petitioner.

Heard the learned Government Pleader for Irrigation for the petitioner and the learned counsel for the 1st respondent, and perused the impugned award.

This Court, in certiorari proceedings, exercises supervisory jurisdiction over Labour Courts/Industrial Tribunals, and does not sit in appeal over the findings recorded by them, where the conclusions arrived at by the Tribunal and the findings recorded by it are based on no evidence or are perverse or where there is an error apparent on the face of the award, does this Court would be justified in interfering in the matter. Therefore, it is within this scope, the award passed by the Tribunal, has to be examined.

A reading of the impugned award would disclose that the

Tribunal allowed the claim of the 1st respondent-workman on the ground that the petitioner failed to produce the relevant record to show that the 1st respondent did not work with them. Since it is the specific case of the petitioner in their counter filed before the Tribunal that the 1st respondent did not work with them, the question of their producing the record does not arise, and more so when it is settled law that the burden is on the workman to prove that he had put in minimum of 240 days service during the period of 12 months prior to the date of his termination.

In fact, a learned Judge of this Court in W.P. No. 10917 of 1997, which was filed by the petitioner herein, assailing similar award, by order dated 01.02.2007, following the judgments of the apex Court **Manager, Reserve Bank of India, Bangalore v. S. Mani**[1], **Batala Coop Sugar Mills Ltd v. Sowaran Singh**[2], **Surenderanagar District Panchayat v. Dahyabhai Amarsinh**[3], **Chief Engineer (Construction) v. Keshava Rao (dead) by LRs**[4] and **Range Forest Officer v. S.T. Hadimini**[5], held that the burden, to prove that he had put in minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman, and since in the instant case, the 1st respondent did not discharge this burden, it cannot be said that the mandatory requirement under Section 25-F of the Industrial Disputes Act, 1947 is violated.

Further, the 1st respondent having raised dispute, nearly 16 years after his alleged termination, cannot seek production of records, and after such long lapse of time, the Tribunal was not justified in allowing the claim of the 1st respondent solely on the ground that the petitioner failed to produce the records.

Since the Tribunal, contrary to law, has placed the burden on the petitioner to show that the 1st respondent had not worked with them for a period of more than 240 days in the 12 months preceding his termination, the award passed by the Tribunal, impugned in this writ petition cannot be sustained, and is liable to be set aside.

Hence, the writ petition is allowed, and the award of the Tribunal, impugned in this writ petition, is quashed. There shall be no order as to costs.

N.V. RAMANA, J.

Dated: 22nd August, 2007
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[1] (2005) 5 SCC 100

[2] (2005) 8 SCC 481

[3] (2005) 8 SCC 750

[4] (2005) 11 SCC 229

[5] (2002) 3 SCC 25